

U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services

(b)(6)

[Redacted]

DATE: JAN 24 2014 OFFICE: TEXAS SERVICE CENTER

[Redacted]

IN RE: Petitioner:  
Beneficiary:

[Redacted]

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

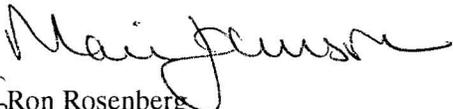
SELF-REPRESENTED

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements.** See also 8 C.F.R. § 103.5. **Do not file a motion directly with the AAO.**

Thank you,

  
Ron Rosenberg  
Chief, Administrative Appeals Office

**DISCUSSION:** The Director, Texas Service Center, denied the employment-based immigrant visa petition. The matter is now before the AAO on appeal. The AAO will dismiss the appeal.

The petitioner seeks classification under section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as a member of the professions holding an advanced degree. The petitioner seeks employment as a cardiologist. At the time he filed the petition, the petitioner was a [REDACTED], a teaching hospital affiliated with [REDACTED].

He subsequently began a fellowship at the [REDACTED]. The petitioner asserts that an exemption from the requirement of a job offer, and thus of a labor certification, is in the national interest of the United States. The director found that the petitioner qualifies for classification as a member of the professions holding an advanced degree, but that the petitioner has not established that an exemption from the requirement of a job offer would be in the national interest of the United States.

On appeal, the petitioner submits a statement.

Section 203(b) of the Act states, in pertinent part:

(2) Aliens Who Are Members of the Professions Holding Advanced Degrees or Aliens of Exceptional Ability. –

(A) In General. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.

(B) Waiver of Job Offer –

(i) . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

The director did not dispute that the petitioner qualifies as a member of the professions holding an advanced degree. The sole issue in contention is whether the petitioner has established that a waiver of the job offer requirement, and thus a labor certification, is in the national interest.

Neither the statute nor the pertinent regulations define the term “national interest.” Additionally, Congress did not provide a specific definition of “in the national interest.” The Committee on the Judiciary merely noted in its report to the Senate that the committee had “focused on national interest by increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise. . . .” S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

Supplementary information to regulations implementing the Immigration Act of 1990, P.L. 101-649, 104 Stat. 4978 (Nov. 29, 1990), published at 56 Fed. Reg. 60897, 60900 (Nov. 29, 1991), states:

The Service [now U.S. Citizenship and Immigration Services (USCIS)] believes it appropriate to leave the application of this test as flexible as possible, although clearly an alien seeking to meet the [national interest] standard must make a showing significantly above that necessary to prove the “prospective national benefit” [required of aliens seeking to qualify as “exceptional.”] The burden will rest with the alien to establish that exemption from, or waiver of, the job offer will be in the national interest. Each case is to be judged on its own merits.

*In re New York State Dep’t of Transportation*, 22 I&N Dec. 215, 217-18 (Act. Assoc. Comm’r 1998) (*NYS DOT*), has set forth several factors which must be considered when evaluating a request for a national interest waiver. First, a petitioner must establish that the alien seeks employment in an area of substantial intrinsic merit. *Id.* at 217. Next, a petitioner must establish that the proposed benefit will be national in scope. *Id.* Finally, the petitioner seeking the waiver must establish that the alien will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications. *Id.* at 217-18.

While the national interest waiver hinges on prospective national benefit, the petitioner must establish that the alien’s past record justifies projections of future benefit to the national interest. *Id.* at 219. The petitioner’s assurance that the alien will, in the future, serve the national interest cannot suffice to establish prospective national benefit. The term “prospective” is included here to require future contributions by the alien, rather than to facilitate the entry of an alien with no demonstrable prior achievements, and whose benefit to the national interest would thus be entirely speculative. *Id.*

The USCIS regulation at 8 C.F.R. § 204.5(k)(2) defines “exceptional ability” as “a degree of expertise significantly above that ordinarily encountered” in a given area of endeavor. By statute, aliens of exceptional ability are generally subject to the job offer/labor certification requirement; they are not exempt by virtue of their exceptional ability. Therefore, whether a given alien seeks classification as an alien of exceptional ability, or as a member of the professions holding an advanced degree, that alien cannot qualify for a waiver just by demonstrating a degree of expertise significantly above that ordinarily encountered in his or her field of expertise.

\_\_\_\_\_ represented the petitioner at the time the petitioner filed the petition. \_\_\_\_\_ subsequently represented the petitioner when the petitioner responded to a request for evidence (RFE). On appeal, the petitioner states that he is “not using a lawyer in [his] case anymore.”

The petitioner filed the Form I-140, Immigrant Petition for Alien Worker, on July 12, 2010. At the time, was the petitioner’s attorney of record. In an introductory statement, \_\_\_\_\_ stated that the petitioner had met all three prongs of the *NYS DOT* national interest test. The intrinsic merit of

medicine is not in dispute. [REDACTED] asserted that the benefit from the petitioner's work is national in scope because

[h]is role as a cardiologist extends beyond merely attending to a small community of patients in research settings. The expansive scope of [the petitioner's] salient contributions encompasses not only his immediate field of cardiology, but also the medical community at large, both nationally and internationally. His original research has already had a direct impact on the field and has gained him nationwide recognition. Through his many publications and presentations, [the petitioner] is not only reaching a large and distinguished audience, but he is in fact reaching countless leading physicians and specialists in the field throughout the country. He is therefore having a profound and direct impact in his field. . . .

Furthermore, he has had his work published in journals and presented at conferences that are national and international. . . .

In addition, [the petitioner] frequently treats patients from different parts of the country on referral. He has worked at tertiary facilities that are constantly referred patients from various regions throughout the country. Because he is able to perform such advanced medical and diagnostic procedures that only a very small percentage of his peers are able to perform, he is called on to treat patients from around the country. In addition, he is constantly teaching the use of the skills to both junior and even senior peers. As such, he is creating a ripple effect that is making the performance of these procedures more widespread nationally.

[REDACTED] provided no details and cited no evidence to support the above statements. The unsupported assertions of counsel do not constitute evidence. See *Matter of Obaigbena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1, 3 n.2 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

Regarding the petitioner's claimed "ability to master state-of-the-art technologies and complex research techniques," [REDACTED] did not identify any such technologies or techniques. The petitioner's résumé lists various medical and research techniques, but the petitioner did not show that these abilities are rare in his specialty as [REDACTED] claimed.

[REDACTED] did not explain why ultimate credit for the "ripple effect" should go to the petitioner rather than to his teachers, or their teachers before them, through whom the petitioner learned the same techniques that he later passed on to others. An alien's job-related training in a new method, whatever its importance, cannot be considered to be an achievement or contribution comparable to the innovation of that new method. *NYSDOT* at 221 n.7.

[REDACTED] addressed the labor certification issue:

In the labor certification process, the employer is required to list the “actual minimum requirements for the job opportunity.” [20 C.F.R. Sec. 656.21 (b)(5)].<sup>1</sup> In effect, this means that the employer must show that it “has not hired workers with less training or experience for jobs similar to . . . the job opportunity.” Such considerations are irrelevant within the factual considerations of the instant case, and are outweighed by the rare and valuable skills that [the petitioner] brings to the United States. . . .

Clearly, [the petitioner], who has been hired to serve in leading roles at some of the nation’s top medical institutions, was not selected for these positions because he possesses minimal or normal requirements. He was selected after nationwide searches in competition with extremely highly qualified peers because he is regarded as superior as a physician and as a researcher and because he is able to achieve results that are far beyond the norm.

[redacted] cited no source for the above claims regarding the employee selection process at the institutions where the petitioner has worked in the United States, and the record contains no evidence to support those claims. Furthermore, the petitioner submitted no persuasive evidence that the petitioner worked in “leading roles” at U.S. teaching hospitals. His own résumé indicates that he has served as “house staff,” *i.e.*, as a fellow or resident. Fellowships and residencies are advanced training positions rather than institutional leadership roles.

[redacted] stated:

In the labor certification process, the Department of Labor stipulates that the employer describe its job opportunity without “unduly restrictive” requirements [22 C.F.R. sec. 656.21(b)(2)]. The employer’s requirements must conform to the standard job classifications set forth in the Dictionary of Occupational Titles and the requirements must be those normally required for the job in the United States. These conditions fall short in consideration of the nature of [the petitioner’s] work in cardiology, because the factors relating to this scientific technique transcend the “context” of any specific employer’s “business” operation. . . . Establishing “business necessity” for “unduly restrictive” requirements is outside the scope of the instant petition. As a physician, [the petitioner] is directly responsible for saving lives. Such skills cannot be measured in the context of business necessity.

There is no 22 C.F.R. § 656. [redacted] apparently meant to cite the regulation at 20 C.F.R. § 656.21(b)(2), which deals with labor certification. Prior to revisions that took effect on March 28, 2005, that regulation read: “The employer shall document that the job opportunity has been and is being described without unduly restrictive job requirements.” The reference to “business necessity” appears to relate to the former regulation at 20 C.F.R. § 656.21(b)(2)(ii) (2004), which read:

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[redacted] s citation and brackets.

If the job opportunity involves a combination of duties, for example engineer-pilot, the employer must document that it has normally employed persons for that combination of duties and/or workers customarily perform the combination of duties in the area of intended employment, and or the combination job opportunity is based on a business necessity.

The regulation mentioned “business necessity” specifically in relation to a combination of duties, which the petitioner has not claimed in this proceeding.<sup>2</sup> [REDACTED] did not explain how clinical skills “cannot be measured in terms of business necessity,” when an employer that provides or teaches cardiology can presumably require its job applicants to have certain necessary skills (or qualifications such as board certification) in that area.

[REDACTED] cited a decision by the Board of Alien Labor Certification Appeals (BALCA) to support the claim that a labor certification application for the petitioner would likely be denied as “unduly restrictive.” The inability to obtain a labor certification would not, by itself, be a deciding factor in the petitioner’s favor. The wording of the statute makes it clear that exemption from the job offer requirement rests on the national interest, not on an alien’s inability to obtain a labor certification. Even so, the cited materials do not support [REDACTED] assertions. In the cited administrative decision, BALCA ruled:

This Panel finds the unqualified term “artistic ability” to be vague and subjective without any guidelines or criteria available to determine whether an applicant is qualified for the position. Accordingly, the special requirement of artistic ability is unduly restrictive under §656.21(b)(2), because the Employer has rejected otherwise qualified U.S. workers based on this vague, subjective requirement.

*Michael Graves Architect*, 89-INA-131, 1990 WL 300112 (BALCA Feb. 21, 1990). BALCA found that “artistic ability” is subjective and difficult to “quantify . . . in terms of length of training or experience.” *Id.* [REDACTED] sought to compare the vaguely-defined “artistic ability” in *Michael Graves* to the present petitioner’s “ability to master state-of-the-art technologies and complex research techniques,” and contended that the petitioner’s “scientific ingenuity cannot be quantified because his extraordinary skills are contingent upon his specialized knowledge of treatments and therapies.” [REDACTED] did not explain how “specialized knowledge,” which is a function of learning, correlates to “scientific ingenuity,” which is a function of creativity.

In the résumé submitted with the petition, the petitioner stated that, at [REDACTED], he is a “Cardiologist and House Staff” whose “responsibilities are as a clinician and teacher.” Describing his employer, the petitioner stated: “[REDACTED] employs more than 1,200 in-house physicians – including 777 residents and fellows.” The figures provided indicate that more than half of the in-house physicians are, like the petitioner, on the house staff and therefore still undergoing training.

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<sup>2</sup> The cited regulation deals with recruitment advertisements, and is unrelated to [REDACTED] assertion.

Describing his responsibilities in more detail, the petitioner listed several clinical procedures such as implantation of pacemakers and “interpretation of intracardiac recordings” along with teaching duties “on topics related [to] cardiac arrhythmias, pacemakers and defibrillators.” The petitioner did not claim research responsibilities in conjunction with his duties at [REDACTED]

The petitioner’s initial submission indicated that he began working at [REDACTED] in July 2010, meaning that he had been working at [REDACTED] for less than two weeks as of the petition’s July 12, 2010 filing date. The filing date is not the date the petitioner completed or mailed the petition, but rather the date that USCIS received it. *See* 8 C.F.R. § 103.2(a)(7). He signed the Form I-140 petition on June 28, 2010, before he had begun working at [REDACTED]. The résumé is undated, and therefore it is not certain whether he had begun working at [REDACTED] when he prepared that document.

The petitioner claimed “responsibilities . . . as a clinician, teacher and a researcher” during his previous employment on the house staff of [REDACTED] from July 2007 to June 2010. The petitioner’s résumé then showed further details under the headings “Clinical,” “Teaching Expertise,” and “Administration,” but no heading for “Research.” The petitioner indicated that he participated “in monthly meetings on ongoing research projects,” conducting “discussion on and evaluation of others’ original cardiovascular research project [*sic*],” but he did not describe any research project that he himself undertook at Lankenau Hospital.

The petitioner claimed to have been a visiting research scientist at the [REDACTED] at the [REDACTED] from November 2001 to May 2004. The relevant section of his résumé reads as follows:

**RESEARCH:**

Performed multiple research projects and successfully published and presented them. The papers and presentations are detailed below.

**TEACHING EXPERTISE/REVIEWING THE WORK OF OTHERS:**

As shown above, the “Research” heading appears to introduce a list of papers and presentations, but no such list immediately follows. Instead, the petitioner proceeded to the next section heading. Several pages later, the résumé includes a list headed “Research Publications and Presentations.” The listed items included two articles published in the [REDACTED] in 2001 and 2002, and 27 conference presentations. Two of the conferences were medical student conferences; four were local chapter meetings; and three were national or international conferences. The remaining 18 conferences were department conferences within various medical schools or teaching hospitals. The petitioner submitted copies of the [REDACTED] articles, and abstracts from two conference presentations, one in 2003 and the other in 2006.<sup>3</sup>

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<sup>3</sup> The publications and presentations all identify an author with the surname “[REDACTED]” rather than the petitioner’s stated surname “[REDACTED]”. The medical school diploma and medical credentials reproduced in the record are in the name of “[REDACTED]”

The petitioner submitted a proof copy of [REDACTED] published by [REDACTED]. The petitioner claimed a publication date of May 2010, about two months prior to the petition's filing date, but the record does not confirm that publication date. The submission of a pre-publication proof copy is not evidence of publication. The petitioner is one of three identified co-authors, along with [REDACTED] both officials with authority over the [REDACTED].

The petitioner submitted seven witness letters, all prepared in late 2009 in support of an earlier, denied petition. Two of the witnesses are co-authors, with the petitioner, of [REDACTED] system chief of the Division of Cardiovascular Disease at [REDACTED], asserted that the petitioner "is one of a select group of extraordinary cardiologists whose continued work in the field will not doubt continue to advance the field nationwide." [REDACTED] claimed that the petitioner "is recognized widely for his use of echocardiography to diagnosis [sic] and treat extremely important heart disorders," but cited no first-hand evidence to support these claims.

[REDACTED], program director of the [REDACTED] stated that the petitioner "has made groundbreaking contributions that have had a direct impact on the clinical practice of medicine, including such important topic areas as myocardial infarctions and coronary disease." [REDACTED] did not identify these claimed contributions or otherwise elaborate on this assertion.

Most of the witness letters include an accompanying résumé or *curriculum vitae* identifying the witness's past affiliations. The letter from [REDACTED], writing as an interventional cardiologist at the [REDACTED] did not include such materials. [REDACTED] did not specify how he knew of the petitioner's past work, but [REDACTED] did claim detailed knowledge of specific patient treatment activities, which implies that they worked together in the past. Dr. [REDACTED] stated that the petitioner's "extraordinary ability to command and implement modern modalities of medicine is evidence of his expert abilities." [REDACTED] described the petitioner's diagnosis and treatment of "a 52 year old woman with a history of seizure and atrial fibrillation," and cited the petitioner's co-authorship of [REDACTED] as evidence that the petitioner "has continually demonstrated that he is at the forefront of his field."

The remaining four initial witnesses are not cardiologists, and did not explain how they have sufficient expertise in cardiology to comment on the petitioner's achievements in that field. [REDACTED] assistant professor of thoracic surgery at [REDACTED], pointed to the case of "a 46 year old male who had shortness of breath and a history of multiple allergies" as "a strong testament to [the petitioner's] extraordinary clinical abilities."

[REDACTED], assistant professor of translational vascular medicine at the [REDACTED], praised the petitioner's "expert contributions to the understanding and treatment of coronary artery disease." More specifically, the petitioner "has worked extensively with fibroblast activation protein (FAP) . . . [and] has been able to show that in both human and murine models of atherosclerosis that FAP in fact is present, and may play a role in weakening the fibrous

cap which . . . leads to clot formation and heart attack.” [REDACTED] did not explain why this finding is especially significant within the petitioner’s specialty.

[REDACTED] senior research investigator at the Department of Dermatology at the University [REDACTED] stated that the petitioner “has utilized his unique clinical background in the field of cardiology to conduct cutting-edge studies that have led to groundbreaking advances and improvements in the field.” [REDACTED] had mentioned in his letter.

[REDACTED] chief of pediatric hematology at the [REDACTED] stated: “What truly distinguishes [the petitioner] from other physicians is his extraordinary ability to combine both clinical medicine and translational/laboratory research to produce exceptional results.” [REDACTED] claimed that the petitioner “has had a great deal of his groundbreaking research published by elite medical journals,” but he identified no examples. The petitioner himself did not claim to have published any journal articles since his second article appeared in the [REDACTED] [REDACTED] in 2002. The assertion that other articles exist in other, unnamed journals – a claim that the petitioner himself has not directly made – does not establish the existence of those articles. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm’r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg’l Comm’r 1972)).

The director issued an RFE on July 10, 2012 (reissued on April 9, 2013), stating: “The petitioner must establish that the beneficiary has a past record of specific prior achievement with some degree of influence on the field as a whole.” In response, attorney [REDACTED] stated:

[The petitioner] currently holds a full-time position of [REDACTED] and [REDACTED] in the Department of Cardiovascular Medicine at the [REDACTED]. [The petitioner’s] current research is focused on advanced heart failure care and research, including heart transplantation.

Among all hospitals in the United States, [REDACTED] is ranked as the number [REDACTED] hospital in the United States for cardiac care, every year since 1995. Currently, there are approximately 25,000 cardiologists in the United States, but only 227 are certified to take care of patients with advanced heart failure. . . . Furthermore, there are only four cardiologists in the United States who are certified in heart failure and electrophysiology.

(Footnotes omitted.) [REDACTED] cited sources for several of the above claims, but not for the assertion that “there are only four cardiologists in the United States who are certified in heart failure and electrophysiology.” Even if the petitioner had established that this number is correct, the petitioner has not shown that this small number is a reflection of skill level rather than specialization.

To support the claim that “only 227 [cardiologists] are certified to take care of patients with advanced heart failure,” [REDACTED] (printout

added to record January 23, 2014). That web page, from the American Board of Internal Medicine (ABIM), indicated that 264 physicians took the subspecialty certification examination for “Advanced Heart Failure and Transplant Cardiology” in 2010. Of those 264 physicians, 86%, or 227, passed the test on their first attempt. The 86% first-time pass rate is typical of the rates listed for other subspecialties, ranging between 80% and 98%. Thus, the cited figure of 227 cardiologists reflects the narrowness of the specialty rather than the difficulty of achieving certification in that subspecialty; roughly six out of seven candidates passed the test on their first attempt.

Also, 2010 was the first year that the ABIM offered the examination, and therefore the 227 who passed represented the entire certified population until the second examination in 2012 more than doubled that population. 287 candidates took the 2012 examination, with an 83% first-time pass rate. Thus, 238 physicians passed the 2012 examination on their first attempt. The cited ABIM document does not show how many physicians passed the examination on their second attempt.

stated: “In June 2013, [the petitioner] will be one of only a select few cardiologists in the United States certified in heart failure and electrophysiology.” wrote this passage on October 3, 2012, he did not explain how he knew that the petitioner would be thus certified in eight months’ time. The petitioner submitted no documentary evidence to show that his future certification was ensured. The RFE response included documentation showing that the ABIM had certified the petitioner in internal medicine from 2007 to 2017, and in cardiovascular disease from 2010 to 2020, but there was no comparable documentation of certification in heart failure or electrophysiology.

Furthermore, an applicant or petitioner must establish that he or she is eligible for the requested benefit at the time of filing the benefit request. 8 C.F.R. § 103.2(b)(1). USCIS cannot properly approve the petition at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. *See Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg’l Comm’r 1971). Here, the petitioner filed the petition in July 2010, and asserted in October 2012 that the petitioner should receive the waiver based on a credential that the petitioner expected to receive in June 2013. Also, the petitioner did not yet work at the when he filed the petition; he had only just started work for his previous employer, . Therefore, even if the petitioner could qualify for the waiver by virtue of holding a rare combination of credentials or working for a prestigious employer (which is not the case), these factors did not apply at the time of filing and cannot retroactively qualify him for a July 12, 2010 priority date.

claimed that the petitioner’s “field of cardiology is the only branch of cardiology which is in high demand.” cited no source for this claim, which he contradicted elsewhere in the same statement by quoting and/or citing various materials from the field referring to “a shortage of more than 1600 general cardiologists and nearly 2000 interventional cardiologists, with electrophysiologists and pediatric cardiologists also in short supply.” The labor certification process is in place to address worker shortages. *NYSDOT* at 218.

Section 203(b)(2)(B)(ii) of the Act makes the waiver available to an “alien physician [who] agrees to work full time as a physician in an area or areas designated by the Secretary of Health and Human

Services as having a shortage of health care professionals.” Qualifying for such a waiver is not simply a matter of asserting a general shortage in one’s medical specialty. The USCIS regulations at 8 C.F.R. § 204.12 specify the evidentiary requirements for shortage-based physician waiver. The petitioner has not submitted the evidence to meet those requirements, and therefore the petitioner has not established eligibility for a waiver based on a shortage of health care professionals.

stated that the petitioner had satisfied various evidentiary requirements, at one point citing the regulation 8 C.F.R. § 204.5(i)(3)(i)(E). That regulation pertains to classification as an outstanding professor or researcher under section 203(b)(1)(B) of the Act. Other quoted requirements pertain to aliens of extraordinary ability under section 203(b)(1)(A) of the Act. In the present proceeding, the petitioner seeks neither of those classifications.

stated that the petitioner “is the co-author [of] . . . .” An updated version of the petitioner’s résumé likewise shows a January 2011 publication date. A submitted printout from the online retailer Amazon shows a first edition publication date of . . . . This publication date fell after the petition’s July 2010 filing date, and it conflicts with the petitioner’s earlier claim of a May 2010 publication date.

In a July 31, 2012 letter, . . . . I, stated: “The first printing of this book was published in February 2011, and a second printing was warranted in May 2012. . . . [The petitioner’s] book has sold over 20,000 copies in this short time. It . . . has garnered great attention among the medical community in the US.” The record offers no comparative evidence to establish the significance of sales of “over 20,000 copies” relative to other books of its kind in the specialty.

The record contains a copy of a list of “ . . . .” the petitioner’s book is one of nine titles listed under . . . . The petitioner also submitted a copy of a positive review of the book in . . . . in which two reviewers from the . . . . Medical Center praised the book as “an authoritative overview” of the subject.

The petitioner submitted a copy of an electronic mail message from . . . . a clinical researcher at . . . ., calling the petitioner’s book “very helpful and inspiring.” . . . . stated in a letter to the petitioner: “It is a fantastic book. It is easy to read, very detailed, and provides in-depth explanations of various conditions, co-morbidities and treatment options. It is a book I frequently use. . . . It has had a great impact on my practice.”

The evidence of a positive reception for the petitioner’s book has limited weight, because the book was published more than six months after the July 2010 filing date. This evidence would have greater value if it continued a previous pattern of impact and influence from the petitioner’s earlier published work, but the petitioner has not established the impact of any of his published work that existed as of the filing date.

█ asserted that the petitioner's "publications have been cited/discussed numerous times in international, peer-reviewed scientific magazines," and that his "outstanding research history is summarized below." Below the latter passage, █ identified two research projects: █ These phrases correspond to the titles of two recent published articles by the petitioner. The former appeared in the March 2011 issue of the █ The second article shows a publication year of 2012 with no date specified; an annotation in the article indicates that the authors submitted the paper for publication in November 2011.

Elsewhere in the same statement, █ provided "a list of [the petitioner's] scholarly articles." The list contained four items: the two articles identified immediately above, and the two articles from the █ included in the initial filing. █ did not claim that the petitioner had published any articles between 2002 and 2011.

A printout from the █ search engine shows four citations of the petitioner's published work, two for each of the two new articles. These citations, like the cited articles themselves, appeared after the petition's July 2010 filing date. There is no evidence of citation of the two earlier articles from the █ Therefore, the minimal documented citation of the petitioner's newest work does not continue a pattern of influence that was already evident at the time of filing. Furthermore, the record does not establish that the petitioner's two new articles constitute an "outstanding research history" as █ described it.

█ asserted that the petitioner qualifies for the waiver because he has "a truly impressive record of publication and presentation" and that his "specific contributions are above what can be expected from others with similar education and experience." The accompanying evidence, however, did not support these claims.

The director denied the petition on June 11, 2013. The director described the petitioner's evidence, and concluded: "The intrinsic merit and national scope of the specialty is not in dispute, however the petitioner has failed to establish individually that he serves that national interest to a substantially greater degree than other cardiologist[s] trained in the same specialty." The director noted that much of the petitioner's published work, including his book, was published after the filing date.

On appeal, the petitioner acknowledges that his "book was published in January 2011," but asserts that it "was written, already reviewed and was in the process of being published" when he submitted a proof copy with the petition. The director did not deny that the book existed in some form as of the filing date. Prior to its publication, however, the book would have had very limited opportunities to influence the field. Furthermore, the petitioner has not claimed that the book reported new techniques in patient diagnosis or treatment. According to the review in the record, the book is a textbook that describes the current frontiers of knowledge in atrial fibrillation, rather than expanding those frontiers with new findings. The book's publisher called it "a clinical guide to the management of atrial fibrillation"; she did not indicate that the petitioner himself had developed or improved the methods that the book describes.

The petitioner states that he is “at [a] completely different stage of [his] professional career” compared to when he filed the petition. He asserts: “I think that working as a Cardiologist at the [redacted] is also a professional recognition and distinction.” The petitioner’s change of employers is another instance of a change of circumstances that occurred after the petition’s filing date; it cannot show that he was already eligible for the waiver at the time he filed the petition.

Furthermore, the record described the petitioner as a fellow at the [redacted] indicating that the [redacted] – which the petitioner holds forth as a top medical institution – considered the petitioner’s medical training to be incomplete in 2012, two years after he filed the petition. The petitioner’s former attorneys portrayed the petitioner’s fellowships and residencies as high-ranking leadership positions, but the record does not support this characterization. The résumés and *curricula vitae* accompanying the witness letters show that residencies, and then fellowships, immediately followed graduation from medical school.

The petitioner asserts that he has submitted letters from “key figures in [the] Cardiology Community in the US” and “from Faculty of the most prestigious Medical Universities in the US.”

The Board of Immigration Appeals (BIA) has held that testimony should not be disregarded simply because it is “self-serving.” *See, e.g., Matter of S-A-*, 22 I&N Dec. 1328, 1332 (BIA 2000) (citing cases). The BIA also held, however: “We not only encourage, but require the introduction of corroborative testimonial and documentary evidence, where available.” *Id.* If testimonial evidence lacks specificity, detail, or credibility, there is a greater need for the petitioner to submit corroborative evidence. *Matter of Y-B-*, 21 I&N Dec. 1136 (BIA 1998).

The opinions of experts in the field are not without weight and have received consideration above. USCIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (Comm’r 1988). However, USCIS is ultimately responsible for making the final determination regarding an alien’s eligibility for the benefit sought. *Id.* The submission of letters from experts supporting the petition is not presumptive evidence of eligibility; USCIS may, as above, evaluate the content of those letters as to whether they support the alien’s eligibility. USCIS may even give less weight to an opinion that is not corroborated, in accord with other information or is in any way questionable. *See id.* at 795; *see also Matter of V-K-*, 24 I&N Dec. 500, 502 n.2 (BIA 2008) (noting that expert opinion testimony does not purport to be evidence as to “fact”). *See also Matter of Soffici*, 22 I&N Dec. 165.

Many of the submitted letters praised the petitioner’s work, but the record does not corroborate key assertions in those letters. [redacted] for instance, claimed that the petitioner “has had his work published in journals,” *i.e.*, more than one journal, but all the available evidence indicates that, at the time of [redacted] letter, the petitioner had published in only one journal. An uncorroborated claim lacks evidentiary weight, whether that claim appears in a statement by the petitioner, counsel, or a third party witness. General assertions regarding the petitioner’s influence or the importance of his work cannot take the place of specific, corroborating evidence.

The petitioner states: “to seek job offer-based immigration . . . would be against my desire to serve my patients as good as I can.” The petitioner also states that, given processing delays, “the filing of a new I-140 petition . . . is also not an option.” The threshold for the waiver is the national interest, rather than the petitioner’s preference or the perceived unavailability of other options.

The petitioner has not established a past record of achievement at a level that would justify a waiver of the job offer requirement. The petitioner need not demonstrate notoriety on the scale of national acclaim, but the national interest waiver contemplates that his influence be national in scope. *NYSDOT* at 217, n.3. More specifically, the petitioner “must clearly present a significant benefit to the field of endeavor.” *Id.* at 218. *See also id.* at 219, n.6 (the alien must have “a past history of demonstrable achievement with some degree of influence on the field as a whole.”).

As is clear from a plain reading of the statute, it was not the intent of Congress that every person qualified to engage in a profession in the United States should be exempt from the requirement of a job offer based on national interest. Likewise, it does not appear to have been the intent of Congress to grant national interest waivers on the basis of the overall importance of a given profession, rather than on the merits of the individual alien. On the basis of the evidence submitted, the petitioner has not established that a waiver of the requirement of an approved labor certification will be in the national interest of the United States.

The AAO will dismiss the appeal for the above stated reasons. In visa petition proceedings, it is the petitioner’s burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, the petitioner has not met that burden.

**ORDER:** The appeal is dismissed.